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**Courtyard Manor of Livonia and Local 79, Service Employees International Union, AFL-CIO.**  
Cases 7-CA-46452 and 7-CA-46673

January 20, 2004

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by the Union between July 28 and October 22, 2003, the General Counsel issued a consolidated complaint on November 7, 2003, against Courtyard Manor of Livonia, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.<sup>1</sup>

On December 16, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On December 17, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by November 21, 2003, all the allegations in the consolidated complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 28, 2003, notified the Respondent that unless an answer was received by December 5, 2003, a motion for default judgment would be filed.

<sup>1</sup> The original complaint in Case 7-CA-46452 issued on October 24, 2003. According to the uncontroverted allegations in the General Counsel's motion, the Respondent did not file an answer to that complaint either.

In the absence of good cause being shown for the failure to file a timely answer,<sup>2</sup> we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and facility in Livonia, Michigan, has been engaged in the operation of an assisted living facility for the elderly, specializing in residents suffering from Alzheimer's disease and dementia. During the 12 months preceding the filing of the charge in Case 7-CA-46452, the Respondent, in conducting its operations, derived gross revenues in excess of \$100,000, and purchased and received at its Livonia facility natural gas valued in excess of \$10,000 from CMS Energy Corp., 80 percent of which was received by CMS Energy Corp. directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 79, Service Employees International Union, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Robin Chandok	Executive Director
Sharon Clontz	Director of Operations
Julie Bell	Human Resource/Payroll Manager
Bonnie Govan	Day Shift Supervisor-Direct Care

At all material times, the Respondent has maintained an employee manual that contains at pages 9 and 13, in pertinent part, the following overly broad rules:

<sup>2</sup> Copies of the consolidated complaint and the November 28 letter were served on the Respondent by both certified and regular mail. The copies sent by certified mail were returned marked "refused" or "refused to sign." The copies sent by regular mail were not returned. It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there. Further, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. *Id.*

**CONFIDENTIALITY**

"Confidential information i.e. pay rates, benefits, etc., about staff persons is not to be discussed . . . You are obligated to hold all information about Courtyard Manor in the strictest confidence."

**SOLICITATION**

" . . . employees are not to solicit or distribute literature."

About July 28, 2003, the Respondent terminated its employees Andrea Walker and Sheila Webb. The Respondent engaged in this conduct because the named employees joined and assisted the Union and to discourage employees from engaging in these and other protected concerted activities.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by terminating employees Andrea Walker and Sheila Webb, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by maintaining overly broad confidentiality and no-solicitation/distribution rules in its employee manual, we shall order the Respondent to rescind those rules, remove them from its employee manual, and advise employees in writing that the rules are no longer being maintained.

In addition, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating employees Andrea Walker and Sheila Webb, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Re-*

*tarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful terminations, and to notify Andrea Walker and Sheila Webb in writing that this has been done and that the terminations will not be used against them in any way.

**ORDER**

The National Labor Relations Board orders that the Respondent, Courtyard Manor of Livonia, Livonia, Michigan, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Maintaining overly broad rules that limit employees' right to discuss their wages and working conditions.

(b) Maintaining overly broad rules that prohibit employees from soliciting or distributing literature in non-work areas and during nonworktime.

(c) Terminating or otherwise discriminating against employees because they join or assist Local 79, Service Employees International Union, AFL-CIO, or any other labor organization, and to discourage employees from engaging in these and other protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the overly broad confidentiality and no solicitation/distribution rules, remove them from its employee manual, and advise employees in writing that the rules are no longer being maintained.

(b) Within 14 days from the date of this Order, offer Andrea Walker and Sheila Webb full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(c) Make whole Andrea Walker and Sheila Webb for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful terminations of Andrea Walker and Sheila Webb, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful terminations will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

cial security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Livonia, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 28, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 20, 2004

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain overly broad rules that limit employees' right to discuss their wages and working conditions.

WE WILL NOT maintain overly broad rules that prohibit employees from soliciting or distributing literature in nonwork areas and during nonworktime.

WE WILL NOT terminate or otherwise discriminate against employees because they join or assist Local 79, Service Employees International Union, AFL-CIO, or any other labor organization, and to discourage employees from engaging in these and other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our overly broad confidentiality and no solicitation/distribution rules, remove them from our employee manual, and advise employees in writing that the rules are no longer being maintained.

WE WILL, within 14 days from the date of the Board's Order, offer Andrea Walker and Sheila Webb full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make whole Andrea Walker and Sheila Webb for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful terminations of Andrea Walker and Sheila Webb, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful terminations will not be used against them in any way.

COURTYARD MANOR OF LIVONIA